

STATE OF INDIANA ) IN THE MARION COUNTY \_\_\_\_\_ COURT  
 ) SS:  
COUNTY OF MARION ) CAUSE NO. \_\_\_\_\_

STATE OF INDIANA, )

Plaintiff, )

v. )

MICHELLE R. DZERVE, individually and doing )  
business as, Choice OK Used Cars, )

Defendant. )

49D12 07 06 PL 0 2 6 8 0 9

**FILED**

(15)

JUN 28 2011

*Elizabeth J. White*  
CLERK OF THE MARION CIRCUIT COURT

**COMPLAINT FOR INJUNCTION,  
RESTITUTION, CIVIL PENALTIES AND COSTS**

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Mary Ann Wehmueller, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code §24-5-0.5-1 *et seq.*, for injunctive relief, consumer restitution, civil penalties, investigative costs, and other relief.

**PARTIES**

1. Defendant Michelle Dzerve is an individual doing business as Choice OK Used Cars, with a principal place of business in Marion County located at 3315 Madison Avenue, Indianapolis, Indiana. At all relevant times the Defendant has engaged in the retail sale of used motor vehicles.

**FACTS**

**TITLE NON-DELIVERY ALLEGATIONS**

2. At least since March 20, 2006, the Defendant has sold used motor vehicles to consumers, including but not limited to:

<u>CONSUMER</u>	<u>SALE DATE</u>	<u>VEHICLE ID</u>	<u>AMT PAID</u>
a) Ahnert, Frank	1/8/2007	2000 Mitsubishi	\$ 8,850.00
b) Bonthu, Varun Kumar	1/22/2007	1996 Audi	\$ 4,600.00
c) Greis, Timothy	1/19/2007	1999 BMW	\$ 6,834.00
d) Harvey-Young, Robin	2/27/2007	1999 Jeep	\$ 4,290.00
e) Hoskins, Tony R.	2/6/2007	1999 Mer-Benz	\$ 9,800.00
f) Lott, Brian	3/16/2007	2001 Kia	\$ 5,880.00
g) Miller, Kerry	2/7/2007	2001 Land Rover	\$ 8,300.00
h) Tanasovich, Joseph	2/7/2007	1997 Jeep	\$ 5,191.00
i) Vining, Ian	1/29/2007	1998 Dodge	\$ 5,032.00

3. True and accurate copies of the Purchase Orders for the vehicles purchased by the consumers identified in paragraph 2(a) through 2(i) are attached and marked as Exhibits "A" through "T" respectively.

4. The Defendant accepted initial payments and/or down payments from the consumers identified in paragraph 2, and accepted payment in full for these vehicles from or on behalf of the consumers identified therein.

5. The Defendant did not possess titles for the vehicles described in paragraph 2 on the vehicles' respective dates of sale.

6. The Defendant failed to deliver vehicle titles on the dates of sale to the consumers identified in paragraph 2.

7. On the respective dates of sale, the Defendant failed to provide consumers Hoskins and Miller with affidavits as required by Ind. Code §9-17-3-3.5.

8. On the dates of sale to consumers Hoskins and Miller, the Defendant represented to Hoskins and Miller, that she would deliver vehicle titles to the consumers or to their respective lienholders.

9. The Defendant provided consumer Ahnert with an affidavit as required by Ind. Code §9-17-3-3.5, stating Defendant would deliver title to Ahnert on or before February 20, 2007.

10. The Defendant provided consumer Bonthu with an affidavit as required by Ind. Code §9-17-3-3.5, stating Defendant would deliver title to Bonthu on or before February 23, 2007.

11. The Defendant provided consumer Greis with an affidavit as required by Ind. Code §9-17-3-3.5, stating Defendant would deliver title to Greis on or before February 20, 2007.

12. The Defendant provided consumer Harvey-Young with an affidavit as required by Ind. Code §9-17-3-3.5, stating Defendant would deliver title to Harvey-Young on or before March 18, 2007.

13. The Defendant provided consumer Lott with an affidavit as required by Ind. Code §9-17-3-3.5, stating Defendant would deliver title to Lott on or before April 17, 2007.

14. The Defendant provided consumer Tanasovich with an affidavit as required by Ind. Code §9-17-3-3.5, stating Defendant would deliver title to Tanasovich on or before February 7, 2007.

15. The Defendant provided consumer Vining with an affidavit as required by Ind. Code §9-17-3-3.5, stating Defendant would deliver title to Vining on or before March 1, 2007.

16. To date, the Defendant has failed to deliver titles to the consumers identified in paragraph 2.

17. The Defendant knew or should have known she could not deliver titles to the consumers identified in paragraph 2 as represented.

**COUNT I**  
**VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT**

18. The transactions identified in paragraphs 2 are "consumer transactions" as defined by Ind. Code §24-5-0.5-2(1).

19. Defendant Michelle Dzerve is a "supplier" as defined in Ind. Code §24-5-0.5-2(3).

20. The Defendant's representations referred to in paragraphs 8, 9, 10, 11, 12, 13, 14, and 15 violate the Indiana Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-1 *et seq.* as follows:

(a) the Defendant and/or her agents misrepresented the characteristics and benefits of consumer transactions, to wit: that the Defendant would provide consumers with titles for vehicles purchased from the Defendant, in violation of Ind. Code §24-5-0.5-3(a)(1).

(b) the Defendant misrepresented warranty of title in violation of Ind. Code § 24-5-0.5-3(a)(8);

- (c) the Defendant misrepresented she would deliver vehicle titles, within a stated or reasonable period of time in violation of Ind. Code § 24-5-0.5-3(a)(10).

21. On the dates of sale identified in paragraphs 2, Defendant Dzerve knew or should have known that she did not possess and could not deliver titles to the respective consumers. The Defendant intentionally or with reckless disregard sold vehicles and continued to sell vehicles without obtaining and delivering vehicle titles.

**COUNT II**  
**VIOLATIONS OF TITLE DELIVERY STATUTE**

22. Plaintiff realleges paragraphs 1 through 21.

23. The Defendant's failure to deliver a vehicle title to each consumer identified in paragraph 2, violates Ind. Code §9-17-3-3.

**COUNT III**  
**INCURABLE DECEPTIVE ACTS**

24. Plaintiff realleges paragraphs 1 through 23.

25. The Defendant's representations constitute incurable deceptive acts and are actionable by the Attorney General pursuant to Ind. Code §24-5-0.5-1 *et seq.*

**IRREPARABLE INJURY**

26. The misrepresentations set forth above will continue and will cause irreparable injury unless the Defendant Michelle Dzerve is enjoined from engaging in further conduct in violation of Ind. Code §24-5-0.5-1 *et seq.*

RELIEF

**WHEREFORE**, Plaintiff, State of Indiana, requests that the Court enter judgment against the Defendant Michelle Dzerve as follows:

- a. A permanent injunction pursuant to Ind. Code §24-5-0.5-4(c) (1), enjoining Michelle Dzerve, her agents, representatives, employees, successors, and assigns, from:
  - (1) misrepresenting the characteristics and benefits of vehicle sales transactions in violation of Ind. Code §24-5-0.5-3(a)(1);
  - (2) selling motor vehicles without delivering vehicle titles as required by Ind. Code §9-17-3-3; and,
  - (3) misrepresenting her ability to complete the subject of a consumer transaction within a stated or reasonable period of time;
- b. Cancellation of contracts pursuant to Ind. Code §24-5-0.5-4(d);
- c. Consumer restitution pursuant to Ind. Code §24-5-0.5-4(c)(2), in the form of a Court Order directing the Indiana Bureau of Motor Vehicles to issue titles for the vehicles identified in paragraph 2, to the specified consumers and/or their lienholders;
- d. Costs pursuant to Ind. Code §24-5-0.5-4(c) (3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- g. Civil penalties pursuant to Ind. Code §24-5-0.5-4(g) on Count I of the Plaintiff's complaint, for the Defendants' knowing violations of Ind. Code §24-5-0.5-3(a) (1); (a) (8); (a) (10) and Ind. Code §9-17-3-3, in the amount \$5,000.00 per violation, payable to the State of Indiana;
- h. Civil penalties pursuant to Ind. Code §24-5-0.5-8 on Count III of the Plaintiff's complaint, for the Defendants' intentional violations of Ind. Code §24-5-0.5-

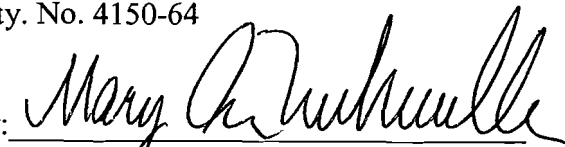
3(a) (1); (a) (8); (a) (10) and Ind. Code §9-17-3-3, in the amount of \$500.00 per violation, payable to the State of Indiana; and

- i. All other proper relief.

Respectfully submitted,

STEVE CARTER  
Indiana Attorney General  
Atty. No. 4150-64

By:



Mary Ann Wehmüller  
Deputy Attorney General  
Atty. No. 0015251-49A

Office of Attorney General  
Indiana Government Center South  
302 W. Washington St., 5th Floor  
Indianapolis, IN 46204  
Telephone: (317) 233-3973  
Maw:388320

Date 1-19- 2007

03/21/2014 09:49 FAX

Purchaser Frank Abbott

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_

ENTER MY ORDER FOR ONE \_\_\_\_\_ ☐ CAR ☐ TRUCK OR \_\_\_\_\_ AS FOLLOWS:

YEAR	MAKE	MODEL	BODY	STOCK NO
1981	Oldsmobile	Oldsmobile Sport Coupe	SUV	—
ODOMETER		SERIAL NO	MOTOR NO	
67170				

CAR SALES PRICE	\$7810	rd	TOTAL PURCHASE PRICE	\$7200	cc
DELIVERY & HANDLING	_____	_____	DEPOSIT	1000	"
TAX	_____	_____	USED CAR ALLOWANCE \$		
FLING	_____	_____	LESS LIEN \$		
LIC. PLATES	_____	_____	HELD BY		
			EQUITY		
			CASH ON DELIVERY	8800	cc
License Plate #					
5375768					
Expires			TOTAL PAYMENT	\$1200	cc
2-20-07			REMARKS		
			Balance Pd By Wire Transfer		
			and 9-07		
TOTAL PURCHASE PRICE	\$7810	cc			

TRADE IN RECORD					
YEAR	MAKE	MODEL	BODY	COLOR	STOCK NO.
COONE TER		SERIAL NO			
		MOTOR NO			

**The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.**

I have read the face and back of this order, and agree to this purchase contract. I hereby certify that I am 18 years of age or older and acknowledge receipt of a copy of this order. The figures in this order are predicated upon actual correct amount of the lien due on the trade-in motor vehicle.

I agree to accept delivery 1-2-78 20 S.S. NO. \_\_\_\_\_

Buyer's Signature [Signature] Phone                     

Address \_\_\_\_\_

THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED BY DEALER.

Salesman Mike Eley Accepted by Mike R. Lee

DEALER'S SIGNATURE

0174





APR 24 2007

ATTORNEY GENERAL OF INDIANA  
CONSUMER PROTECTION

Date 7-2-01 20\_\_

Phone: \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_

ENTER MY ORDER FOR ONE \_\_\_\_\_ ☐ CAR ☐ TRUCK OR \_\_\_\_\_ AS FOLLOWS:

YEAR 1996	MAKE Audi	MODEL A4	BODY 4Dr	STOCK NO _____
ODOMETER 125972		SERIAL NO _____ MOTOR NO _____		

CAR SALES PRICE	\$ 4550	00	TOTAL PURCHASE PRICE	\$ 4600	00
DELIVERY & HANDLING			DEPOSIT	2000	00
TAX			USED CAR ALLOWANCE \$		
FILING			LESS LIEN \$		
LIC. PLATES	50	00	HELD BY		
			EQUITY		
			CASH ON DELIVERY	2600	00
Enter plate #					
5375773			TOTAL PAYMENT	\$ 4600	00
			REMARKS		
			PAID CASH		
TOTAL PURCHASE PRICE	\$ 4600	00			

TRADE IN RECORD

YEAR	MAKE	MODEL	BODY	COLOR	STOCK NO.
ODOMETER		SERIAL NO.	MOTOR NO.		

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I have read the face and back of this order, and agree to this purchase contract. I hereby certify that I am 18 years of age or older and acknowledge receipt of a copy of this order. **The figures in this order are predicated upon actual correct amount of the lien due on the trade-in motor vehicle.**

I agree to accept delivery, \_\_\_\_\_ 20\_\_\_\_ S.S. NO: \_\_\_\_\_

Buyer's Signature [Signature] Phone                     

Address \_\_\_\_\_

THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED BY DEALER

Salesman W. R. Dyer Accepted by W. R. Dyer

DEALER'S SIGNATURE



# SED VEHICLE ORDER

Date 1-19-2007

Choice of Used Cars

Purchaser Timothy S. Greis

Phone: [REDACTED]

Address: [REDACTED] City: [REDACTED] State: [REDACTED]

TER MY ORDER FOR ONE ☒ CAR ☐ TRUCK OR ☐ AS FOLLOWS:

YEAR	MAKE	MODEL	BODY	STOCK NO.
1999	BMW	323 IS	2 DR	
MILEAGE		SERIAL NO.		
146566		MOTOR NO.		
SALES PRICE		TOTAL PURCHASE PRICE		
\$6400.00		\$6834.00		
DELIVERY & HANDLING		DEPOSIT		
384.00		500.00		
TAXES		USED CAR ALLOWANCE \$		
50.00				
PLATES		LESS LIEN \$		
		HELD BY		
		EQUITY		
		CASH ON DELIVERY		
		6334.00		
TOTAL PAYMENT				
6834.00				
EXPIRES		REMARKS		
1-20-07		PAID BY CASHIER CK		
		FIFTH THIRD BANK		
TOTAL PURCHASE PRICE				
\$6834.00				

YEAR	MAKE	MODEL	BODY	COLOR	STOCK NO.
		NA			
MILEAGE		SERIAL NO.			
		MOTOR NO.			

The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

I have read the face and back of this order, and agree to this purchase contract. I hereby certify that I am 18 years of age or older and acknowledge receipt of a copy of this order. The figures in this order are predicated on actual correct amount of the lien due on the trade-in motor vehicle.

I agree to accept delivery 1/19/07 SS. NO. 2007

Buyer's Signature [Signature] Phone: [REDACTED]

Address: [REDACTED]

THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED BY DEALER

Salesman [Signature] Accepted by [Signature]

DEALER'S SIGNATURE



# USED VEHICLE ORDER

5-2-17 07

Dealer Choice Motors  
 Purchaser Robert [redacted] Phone [redacted]  
 Address [redacted] State [redacted]

ENTER MY ORDER FOR ONE ☒ CAR ☐ TRUCK ☐ MOTORHOME

YEAR	MAKE	MODEL	STOCKING
1998	Jeep	Cherokee	
ODOMETER	SERIAL NO.	VIN	
118734		[redacted]	

CAR SALES PRICE	\$4600	TOTAL PURCHASE PRICE	\$4600
DELIVERY & HANDLING		USED GAP ALLOWANCE	
TAX	240		
FEES			
LIC. PLATES			

CASH ON DELIVERY	\$700
REMARKS	
TOTAL PAYMENT	\$4900

TOTAL PURCHASE PRICE	\$4900		
TRADE-IN RECORD			
YEAR	MAKE	MODEL	STOCKING
ODOMETER	SERIAL NO.	VIN	

The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

I have read the face and back of this order and agree to abide by the contract hereby made. I am 18 years of age or older and am a legal resident of the state in which this order is predicated upon actual correct amount of the loan due on the trade-in motor vehicle.

I agree to accept delivery ☒ or not ☐  
 Buyer's Signature [Signature] Date 5-2-17  
 Address [redacted]

THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED BY DEALER  
 Salesman [Signature] Accepted by [Signature]



**USED VEHICLE ORDER**Date 2-22-2007Dealer Choice OK Used CarsPurchaser Tom Hoskins

Phone: [REDACTED]

Address: [REDACTED]

City: [REDACTED] State: [REDACTED]

ENTER MY ORDER FOR ONE: ☒ CAR ☐ TRUCK ☐ OR ☐ AS FOLLOWS:

YEAR <u>1999</u>	MAKE <u>Mercedes</u>	MODEL <u>ML320</u>	BODY <u>4DR</u>
MOTOR NO. <u>113250</u>		VIN <u>4DR</u>	
CAR SALES PRICE <u>\$7500</u>	TOTAL PURCHASE PRICE <u>\$9500</u>		
DELIVERY & HANDLING <u>0</u>	DEPOSIT <u>PAY PAL 1000.00</u>		
TAX (8) AND REGISTRATION <u>0</u>	USED CAR ALLOWANCE <u>0</u>		
FEES <u>50.00</u>	LESS CASH <u>0</u>		
PLATES <u>0</u>	EQUITY <u>0</u>		
CASH ON DELIVERY <u>0</u>		TOTAL PAYMENTS <u>\$9500.00</u>	
EXTERNAL PLATE # <u>5375 (93)</u>		REMARKS <u>PAID Balance With Check</u>	
EXPIRES <u>3-25-07</u>			
TOTAL PURCHASE PRICE <u>\$9500.00</u>			

TRADE-IN RECORD	YEAR <u>1999</u>	MAKE <u>Mercedes</u>	MODEL <u>ML320</u>	BODY <u>4DR</u>	VIN <u>4DR</u>
COMETED					

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I have read the face and back of this order, and agree to this purchase contract. I hereby certify that I am 18 years of age or older and acknowledge receipt of a copy of this order. The figures in this order are predicated upon actual correct amount of the lien due on the trade-in motor vehicle and I will make good on it.

Buyer's Signature Tom Hoskins

Address [REDACTED]

Salesman [REDACTED] Accepted by [REDACTED]



Date 3-16- 2007

Purchaser Frank D. Galt

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_

ENTER MY ORDER FOR ONE \_\_\_\_\_ ☐ CAR ☒ TRUCK OR \_\_\_\_\_ AS FOLLOWS:

TRADE IN RECORD					
YEAR	MAKE	MODEL	BODY	COLOR	STOCK NO.
ODOMETER	SERIAL NO		MOTOR NO		

I have read the face and back of this order, and agree to this purchase contract. I hereby certify that I am 18 years of age or older and acknowledge receipt of a copy of this order. The figures in this order are predicated upon actual correct amount of the lien due on the trade-in motor vehicle.

I agree to accept delivery \_\_\_\_\_ 2007 U.S. NO. \_\_\_\_\_

Buyer's Signature [Signature] Phone                     

**Address** \_\_\_\_\_

THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED BY DEALER

Salesman Mr. J. L. Jones Accepted by Mr. R. L. Jones

DEALER'S SIGNATURE





USED VEHICLE ORDER 2-7-2007

Dealer Choice of Used Cars  
Purchaser Joseph Tanasovich Phone: [REDACTED]  
Address: [REDACTED] City [REDACTED] State [REDACTED]

ENTER MY ORDER FOR ONE ☐ CAR ☒ TRUCK OR \_\_\_\_\_ AS FOLLOWS:

YEAR 1997	MAKE Jeep	MODEL WRANGLER	BODY SUV	STOCK NO.
ODOMETER 131018		SERIAL NO. [REDACTED]		
MOTOR NO.				
CAR SALES PRICE	\$ 485000	TOTAL PURCHASE PRICE	\$ 519100	
DELIVERY & HANDLING		DEPOSIT	100000	
TAX	291 00	USED CAR ALLOWANCE \$		
FILING	50 00	LESS LIEN \$		
LIC. PLATES		HELD BY		
		EQUITY		
		CASH ON DELIVERY	509100	
Enter plate #				
J375783		TOTAL PAYMENT	\$ 519100	
Expires 3-10-07		REMARKS		
TOTAL PURCHASE PRICE		\$ 519100		

YEAR	MAKE	MODEL	BODY	COLOR	STOCK NO.
ODOMETER	SERIAL NO.		MOTOR NO.		

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I have read the face and back of this order, and agree to this purchase contract. I hereby certify that I am 18 years of age or older and acknowledge receipt of a copy of this order. The figures in this order are predicated upon actual correct amount of the lien due on the trade-in motor vehicle.

I agree to accept delivery 2-7-07 20 S.S. NO. \_\_\_\_\_  
Buyer's Signature [Signature] Phone \_\_\_\_\_  
Address \_\_\_\_\_

THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED BY DEALER.  
Salesman Michelle D. [Signature] Accepted by Michelle K. [Signature]  
DEALER'S SIGNATURE



USED VEHICLE ORDER Date 1-29- 2007

Dealer Choice ok used cars

Purchaser Tan, Vining Phone [REDACTED]

Address [REDACTED] City [REDACTED] State [REDACTED]

ENTER MY ORDER FOR ONE ☐ CAR ☒ TRUCK OR ☐ AS FOLLOWS:

YEAR <u>1998</u>	MAKE <u>Dodge</u>	MODEL <u>Durango</u>	BODY <u>SUV</u>	STOCK NO <u></u>
ODOMETER <u>12003</u>		SERIAL NO <u></u>		
MOTOR NO <u></u>				
CAR SALES PRICE	\$ <u>4700.00</u>	TOTAL PURCHASE PRICE	\$ <u>5032.00</u>	
DELIVERY & HANDLING	<u></u>	DEPOSIT		
TAX	<u>293.00</u>	USED CAR ALLOWANCE \$		
FILING	<u>50.00</u>	LESS LIEN \$		
UC. PLATES	<u></u>	HELD BY		
Temp plate #	<u>J375797</u>	EQUITY		
Expires <u>4-3-07</u>		CASH ON DELIVERY	\$ <u>5032.00</u>	
Interim plate #	<u>3-375777</u>			
Expires <u>3-1-07</u>		TOTAL PAYMENT	\$ <u>5032.00</u>	
REMARKS				
<u>Paid with Cashiers CK</u>				
<u>Natl City</u>				
TOTAL PURCHASE PRICE	\$ <u>5032.00</u>			

YEAR <u>1998</u>	MAKE <u>Dodge</u>	MODEL <u>Durango</u>	BODY <u>SUV</u>	COLOR <u></u>	STOCK NO <u></u>
ODOMETER <u>12003</u>	SERIAL NO <u>10A</u>				
MOTOR NO <u></u>					

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Agree to accept delivery 1-29-07 SS NO

Buyer's Signature [Signature] Phone

